

sections 78n and 78o-3 of this title] shall not limit the authority of the Securities and Exchange Commission, a registered securities association, or a national securities exchange under any provision of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or preclude the Commission or such association or exchange from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, except for amendment of subsecs. (a) through (d) by Pub. L. 94-29 to be effective 180 days after June 4, 1975, with provisions of subsecs. (b)(2) and (c)(6), as amended by Pub. L. 94-29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to a natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CHANGES IN ORGANIZATION AND RULES OF NATIONAL SECURITIES EXCHANGES AND REGISTERED SECURITIES ASSOCIATIONS

Section 31(b) of Pub. L. 94-29 provided that: "If it appears to the Commission at any time within one year of the effective date of any amendment made by this Act [see Short Title of 1975 Amendment note under section 78a of this title] to the Securities Exchange Act of 1934 that the organization or rules of any national securities exchange or registered securities association registered with the Commission on the date of enactment of this Act [June 4, 1975] do not comply with such Act as amended, the Commission shall so notify such exchange or association in writing, specifying the respects in which the exchange or association is not in compliance with such Act. On and after the one hundred eightieth day following the date of receipt of such notice by a national securities exchange or registered securities association, the Commission, without regard to the provisions of section 19(h) of the Securities Exchange Act of 1934 [section 78s(h) of this title], as amended by this Act, is authorized by order, to suspend the registration of any such exchange or association or impose limitations on the activities, functions, and operations of any such exchange or association, if the Commission finds, after notice and opportunity for hearing, that the organization or rules of such exchange or association do not comply with such Act. Any such suspension or limitation shall continue in effect until the Commission, by order, declares that such exchange or association is in compliance with such requirements."

§ 78g. Margin requirements

(a) Rules and regulations for extension of credit; standard for initial extension; undermargined accounts

For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall, prior to October 1, 1934, and from time to time thereafter, prescribe rules and regulations with respect to the amount of credit that may be initially extended

and subsequently maintained on any security (other than an exempted security or a security futures product). For the initial extension of credit, such rules and regulations shall be based upon the following standard: An amount not greater than whichever is the higher of—

- (1) 55 per centum of the current market price of the security, or
- (2) 100 per centum of the lowest market price of the security during the preceding thirty-six calendar months, but not more than 75 per centum of the current market price.

Such rules and regulations may make appropriate provision with respect to the carrying of undermargined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the substitution or additional purchases of securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales, arbitrage transactions, and securities to which paragraph (2) of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details. For the purposes of paragraph (2) of this subsection, until July 1, 1936, the lowest price at which a security has sold on or after July 1, 1933, shall be considered as the lowest price at which such security has sold during the preceding thirty-six calendar months.

(b) Lower and higher margin requirements

Notwithstanding the provisions of subsection (a) of this section, the Board of Governors of the Federal Reserve System, may, from time to time, with respect to all or specified securities or transactions, or classes of securities, or classes of transactions, by such rules and regulations (1) prescribe such lower margin requirements for the initial extension or maintenance of credit as it deems necessary or appropriate for the accommodation of commerce and industry, having due regard to the general credit situation of the country, and (2) prescribe such higher margin requirements for the initial extension or maintenance of credit as it may deem necessary or appropriate to prevent the excessive use of credit to finance transactions in securities.

(c) Unlawful credit extension to customers

(1) Prohibition

It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

(A) on any security (other than an exempted security), except as provided in paragraph (2), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall prescribe under subsections (a) and (b) of this section; and

(B) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board may prescribe—

(i) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board; and

(ii) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of subparagraph (A).

(2) Margin regulations

(A) Compliance with margin rules required

It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security futures product unless such activities comply with the regulations—

(i) which the Board shall prescribe pursuant to subparagraph (B); or

(ii) if the Board determines to delegate the authority to prescribe such regulations, which the Commission and the Commodity Futures Trading Commission shall jointly prescribe pursuant to subparagraph (B).

If the Board delegates the authority to prescribe such regulations under clause (ii) and the Commission and the Commodity Futures Trading Commission have not jointly prescribed such regulations within a reasonable period of time after the date of such delegation, the Board shall prescribe such regulations pursuant to subparagraph (B).

(B) Criteria for issuance of rules

The Board shall prescribe, or, if the authority is delegated pursuant to subparagraph (A)(ii), the Commission and the Commodity Futures Trading Commission shall jointly prescribe, such regulations to establish margin requirements, including the establishment of levels of margin (initial and maintenance) for security futures products under such terms, and at such levels, as the Board deems appropriate, or as the Commission and the Commodity Futures Trading Commission jointly deem appropriate—

(i) to preserve the financial integrity of markets trading security futures products;

(ii) to prevent systemic risk;

(iii) to require that—

(I) the margin requirements for a security future product be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 78f(a) of this title; and

(II) initial and maintenance margin levels for a security future product not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 78f(a) of this title, other than an option on a security future;

except that nothing in this subparagraph shall be construed to prevent a national

securities exchange or national securities association from requiring higher margin levels for a security future product when it deems such action to be necessary or appropriate; and

(iv) to ensure that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures products, are and remain consistent with the requirements established by the Board, pursuant to subparagraphs (A) and (B) of paragraph (1).

(3) Exception

This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged by a member of a national securities exchange or a broker or dealer to or for a member of a national securities exchange or a registered broker or dealer—

(A) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

(B) to finance its activities as a market maker or an underwriter;

except that the Board may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by this paragraph if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

(d) Unlawful credit extension in violation of rules and regulations; exceptions to application of rules, etc.

(1) Prohibition

It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder.

(2) Exceptions

This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged—

(A) by a person not in the ordinary course of business;

(B) on an exempted security;

(C) to or for a member of a national securities exchange or a registered broker or dealer—

(i) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

(ii) to finance its activities as a market maker or an underwriter;

(D) by a bank on a security other than an equity security; or

(E) as the Board shall, by such rules, regulations, or orders as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder.

(3) Board authority

The Board may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by subparagraph (C) if it determines that such action is necessary or appropriate in the public interest or for the protection of investors.

(e) Effective date of this section and rules and regulations

The provisions of this section or the rules and regulations thereunder shall not apply on or before July 1, 1937, to any loan or extension of credit made prior to June 6, 1934, or to the maintenance, renewal, or extension of any such loan or credit, except to the extent that the Board of Governors of the Federal Reserve System may by rules and regulations prescribe as necessary to prevent the circumvention of the provisions of this section or the rules and regulations thereunder by means of withdrawals of funds or securities, substitutions of securities, or additional purchases or by any other device.

(f) Unlawful receipt of credit; exemptions

(1) It is unlawful for any United States person, or any foreign person controlled by a United States person or acting on behalf of or in conjunction with such person, to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit from any lender (without regard to whether the lender's office or place of business is in a State or the transaction occurred in whole or in part within a State) for the purpose of (A) purchasing or carrying United States securities, or (B) purchasing or carrying within the United States of any other securities, if, under this section or rules and regulations prescribed thereunder, the loan or other credit transaction is prohibited or would be prohibited if it had been made or the transaction had otherwise occurred in a lender's office or other place of business in a State.

(2) For the purposes of this subsection—

(A) The term "United States person" includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

(B) The term "United States security" means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

(C) The term "foreign person controlled by a United States person" includes any noncorporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corpora-

tion in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock.

(3) The Board of Governors of the Federal Reserve System may, in its discretion and with due regard for the purposes of this section, by rule or regulation exempt any class of United States persons or foreign persons controlled by a United States person from the application of this subsection.

(g) Effect of bona fide agreement for delayed delivery of mortgage related security

Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no member of a national securities exchange or broker or dealer shall be deemed to have extended or maintained credit or arranged for the extension or maintenance of credit for the purpose of purchasing a security, within the meaning of this section, by reason of a bona fide agreement for delayed delivery of a mortgage related security or a small business related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.

(June 6, 1934, ch. 404, title I, § 7, 48 Stat. 886; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; Pub. L. 90-437, July 29, 1968, 82 Stat. 452; Pub. L. 91-508, title III, § 301(a), Oct. 26, 1970, 84 Stat. 1124; Pub. L. 98-440, title I, § 102, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103-325, title II, § 203, Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104-290, title I, § 104(a), Oct. 11, 1996, 110 Stat. 3422; Pub. L. 105-353, title III, § 301(b)(5), (6), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-554, § 1(a)(5) [title II, § 206(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-429.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, § 1(a)(5) [title II, § 206(b)(1)], inserted "or a security futures product" after "exempted security" in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 106-554, § 1(a)(5) [title II, § 206(b)(2)], inserted "except as provided in paragraph (2)," after "security".

Subsec. (c)(2), (3). Pub. L. 106-554, § 1(a)(5) [title II, § 206(b)(3), (4)], added par. (2) and redesignated former par. (2) as (3).

1998—Subsecs. (a), (b). Pub. L. 105-353, § 301(b)(5), substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

Subsec. (d). Pub. L. 105-353, § 301(b)(6), substituted "exceptions" for "exception" in heading.

1996—Subsec. (c). Pub. L. 104-290, § 104(a)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

"(1) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe under subsections (a) and (b) of this section;

"(2) without collateral or on any collateral other than securities, except in accordance with such rules

and regulations as the Board of Governors of the Federal Reserve System may prescribe (A) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board of Governors of the Federal Reserve System, and (B) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (1) of this subsection."

Subsec. (d). Pub. L. 104-290, §104(a)(2), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board of Governors of the Federal Reserve System shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply (A) to a loan made by a person not in the ordinary course of his business, (B) to a loan on an exempted security, (C) to a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of a national securities exchange, (D) to a loan by a bank on a security other than an equity security, or (E) to such other loans as the Board of Governors of the Federal Reserve System shall, by such rules and regulations as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder."

1994—Subsec. (g). Pub. L. 103-325 inserted "or a small business related security" after "mortgage related security".

1984—Subsec. (g). Pub. L. 98-440 added subsec. (g).

1970—Subsec. (f). Pub. L. 91-508 added subsec. (f).

1968—Subsec. (a). Pub. L. 90-437, §1(1), struck out "registered on a national securities exchange" after "(other than an exempted security)".

Subsec. (c). Pub. L. 90-437, §1(2), struck out "who transacts a business in securities through the medium of any such member" after "any broker or dealer", in par. (1) struck out "registered on a national securities exchange" after "(other than an exempted security)", and in par. (2) substituted "other than securities" for "other than exempted securities and/or securities registered upon a national securities exchange".

Subsec. (d). Pub. L. 90-437, §1(3), struck out "registered on a national securities exchange" after "the purpose of purchasing or carrying any security", and "registered on national securities exchanges" after "the purpose of purchasing or carrying securities".

CHANGE OF NAME

Act Aug. 23, 1935, in subsec. (e), substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-508 effective on first day of seventh calendar month which begins after Oct. 26, 1970, except as otherwise provided in section 401(c) of Pub. L. 91-508, see section 401(a) of Pub. L. 91-508, set out as a note under section 1951 of Title 12, Banks and Banking.

Section 401(c) of Pub. L. 91-508 provided that: "The Board of Governors of the Federal Reserve System may

by regulation provide that the amendment made by title III [amending this section] shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment [Oct. 26, 1970]."

VALIDITY OF RULES AND REGULATIONS

Section 301(b) of Pub. L. 91-508 provided that: "The amendment made by subsection (a) of this section [amending this section] does not affect the continuing validity of any rule or regulation under section 7 of the Securities Exchange Act of 1934 [this section] in effect prior to the effective date of the amendment."

§ 78h. Restrictions on borrowing and lending by members, brokers, and dealers

It shall be unlawful for any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange, directly or indirectly—

(a) In contravention of such rules and regulations as the Commission shall prescribe for the protection of investors to hypothecate or arrange for the hypothecation of any securities carried for the account of any customer under circumstances (1) that will permit the commingling of his securities without his written consent with the securities of any other customer, (2) that will permit such securities to be commingled with the securities of any person other than a bona fide customer, or (3) that will permit such securities to be hypothecated, or subjected to any lien or claim of the pledgee, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities.

(b) To lend or arrange for the lending of any securities carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commission shall prescribe for the protection of investors.

(June 6, 1934, ch. 404, title I, §8, 48 Stat. 888; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Pub. L. 94-29, §5, June 4, 1975, 89 Stat. 109; Pub. L. 98-440, title I, §103, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103-325, title II, §204, Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104-290, title I, §104(b), Oct. 11, 1996, 110 Stat. 3423.)

AMENDMENTS

1996—Pub. L. 104-290 redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to borrowing in ordinary course of business as broker or dealer on any security, except exempted security, registered on national securities exchange.

1994—Subsec. (a). Pub. L. 103-325 inserted "or a small business related security" after "mortgage related security" in last sentence.

1984—Subsec. (a). Pub. L. 98-440 inserted provision that no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security under certain conditions.

1975—Pub. L. 94-29, §5(1), substituted "any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange" for "any member of a national securities exchange, or any broker or dealer who